

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B03

PLR-144147-10

Date:

November 30, 2010

## LEGEND

Company =

A =

State =

Date =

Years =

Dear :

This responds to a letter dated October 15, 2010, submitted on behalf of Company by its authorized representative, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code (Code).

## FACTS

Company incorporated in State on Date. No Form 2553, Election by a Small Business Corporation, was timely filed for Company, but Company represents that there was reasonable cause for the failure to timely make this election. Accordingly, Company requests a ruling that it be treated as an S corporation effective Date.

## LAW AND ANALYSIS

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1362(b)(1) provides that an election under § 1362(a) may be made by a small business corporation for any taxable year (A) at any time during the preceding taxable year, or (B) at any time during the taxable year and on or before the 15th day of the third month of the taxable year.

Section 1362(b)(3) provides that if (A) a small business corporation makes an election under § 1362(a) for any taxable year, and (B) the election is made after the 15th day of the third month of the taxable year and on or before the 15th day of the third month of the following taxable year, then the election is treated as made for the following taxable year.

Section 1362(b)(5) provides that if (A) an election under § 1362(a) is made for any taxable year (determined without regard to § 1362(b)(3)), after the date prescribed by § 1362(b) for making the election for the taxable year or no § 1362(a) election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make the election, the Secretary may treat the election as timely made for the taxable year (and § 1362(b)(3) shall not apply).

## CONCLUSION

Based solely on the facts submitted and representations made, we conclude that Company has established reasonable cause for failing to make a timely S corporation election effective Date. Accordingly, provided that Company makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective Date within 120 days from the date of this letter, then such election will be treated as timely made for Company's taxable year beginning Date. A copy of this letter should be attached to the Form 2553.

This ruling is contingent on Company and its sole shareholder, A, filing, within 120 days from the date of this letter, Federal tax returns consistent with the treatment of Company as an S corporation for Years. A copy of this letter should be attached to these returns. If the above condition is not met, then this ruling is null and void.

Except as expressly provided herein, no opinion is expressed or implied concerning the Federal tax consequences of the facts discussed or referenced in this letter under any other provision of the Code. Specifically, no opinion is expressed or

implied concerning whether Company otherwise qualifies as an S corporation for Federal tax purposes.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

Pursuant to a power of attorney on file with this office, a copy of this letter will be sent to your authorized representative.

Sincerely,

/s/

Tara P. Volungis  
Acting Branch Chief, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes